IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.71 OF 2004

IN

WRIT PETITION NO.2763 OF 2002

Capt.Kersy Ratonsha Driver ...Petitioner

VS.

1.The Collector of Chennai
and others. ...Respondents

Mr.S.C.Naidu i/b. M/s.C.R.Naidu & Co., for Petitioner.

Mr.D.D.Madan with Mr.D.H.Mehta & R.M.Pardiwala i/b. M/s.Mulla & Mulla & C.B.&C. for Respondents 4 to 6.

CORAM: D.K.DESHMUKH, J.

DATED: 29TH JANUARY,2007.

P.C.:

1. The allegations of contempt is in two parts. So far as respondent nos. 4, 5 and 6 are concerned, the writ petition no.2763 of 2002 was filed by the petitioner in which an order dated 13.2.2003 was made. The second respondent in that petition was directed to forward the recovery certificate dated 13.9.2002 for recovery of the amount from the present respondent nos. 3, 4, 5 and 6. The respondent no.2

was to forward that certificate to the Collector who is respondent no.1 in the present petition. A direction was issued to the Collector to proceed further to recover the amount as per the recovery certificate and to submit report to the Court within 12 weeks. It appears that against that order a Special Leave Petition was preferred before the Supreme Court. By the order passed in the Special Leave Petition, the Supreme Court stayed the order of the High Court subject to present respondent nos. 3 to 6 depositing the amount in this Court within four weeks. The amount was not deposited within four weeks. That order of the Supreme Court was dated 1.8.2003. In the meantime the Division Bench of this Court on 17.11.2003 has noted that as per the order of the Supreme Court the amount has not been deposited by the present respondent nos. 3 to 6, and the Division Bench has directed the present respondent nos. 4, 5 and 6 to file an affidavit disclosing their movable and immovable properties within two weeks from 17.11.2003. Then another order was passed by the Division Bench in the same Writ Petition on 17.12.2003 admitting the petition for final hearing and granting ad-interim order in terms of prayer clause (b). It is common ground that the ad-interim order granted in terms of prayer clause

(b) is not relevant for the purpose of the present contempt petition. The Division Bench has made it clear that the Recovery officer is at liberty to proceed further to recover the amount. The Division Bench has also noted that the order of the Supreme Court has not been complied with by the respondent nos. 3 to 6. The Special Leave Petition was disposed of by the Supreme Court by order dated 12.1.2004. It was withdrawn by the respondent nos. 3 to 6 because of the order dated 17.12.2003.

2. By this petition, it is alleged that the respondent nos. 3 to 6 have disobeyed the order made by this court dated 17.11.2003 whereby the respondent nos. 4, 5 and 6 were directed to file an affidavit disclosing their movable and immovable assets. It appears that in this contempt petition, the order dated 3.3.2006 was passed wherein a statement was made on behalf of the respondent nos.,4, 5 and 6 that they will file their affidavit disclosing their assets within four weeks. Against that order an appeal was filed by the present petitioner before the Division Bench. That appeal number is 334 of 2006. That appeal was disposed of by the Division Bench by order dated 5.5.2006. The order of the Division Bench reads as under:-

> ". Heard the learned Counsel for the parties. The learned Counsel for the Respondents tenders three affidavits dated 4th May,2006 of Mr.Ravi Prakash Khemka, Mr.Raj Kumar Khemka and Mr.Tirupathi Kumar Khemka being the Respondent nos.4, 5 and 6 respectively, disclosing their assets and liabilities pursuant to the order dated 17th November,2003 passed in the Writ Petition. The aforesaid affidavits are taken on record. In view of the aforesaid affidavits in compliance of the order dated 17th November,2003, nothing further survives in the Appeal. Appeal stands dismissed."

Perusal of the above quoted order shows that the Division Bench took the affidavits filed by the defendant nos. 4 to 6 on record. The Division Bench has also noted that these affidavits have been filed in compliance with the order dated 17.11.2003. It is, thus, clear that as on today the order dated 17.11.2003 passed by the Division Bench has been complied with but there is no denial that there has

been considerable delay in complying with the order. The respondent nos. 4, to 6 have tendered apology though it is a conditional apology. According to the learned Counsel appearing for petitioner, the apology should not be accepted because it is not a genuine apology. According to the learned Counsel the delay was deliberate and it has not been properly explained.

3. In my opinion, it is true that the delay in complying with the order is inordinate, and therefore, it cannot be said that the respondent nos. 4 to 6 have not dis-obeyed the order passed by this Court. In my opinion, considering that the respondent nos. 4 to 6 have tendered the apology, considering the nature of jurisdiction conferred on this Court by the Contempt of Courts Act, interest of justice would be subserved by accepting the apology tendered by the respondent nos. 4, 5 and 6 and directing them to pay cost of this petition to the petitioner. The cost is quantified at Rs.10,000/- which is to be paid within a period of four weeks from today.

4. The learned Counsel appearing for petitioner submitted that according to him, the

respondents have disobeyed even the order dated 17.12.2003. Perusal of the order dated 17.12.2003 shows that only interim order that is made by the Court is interim order in terms of prayer clause (b). As observed above, it is common ground that the interim order made in terms of prayer clause (b) is not relevant in this petition. There is no other interim order made by the Court on 17.12.2003 which can be said to be required to be complied with by the respondents. The only allegations that I found in the petition in relation to the order dated 17.12.2003 is contained in paragraph (7). In paragraph (7), the petitioner contends that by order dated 17.12.2003 ad-interim order in terms of prayer clause (c) was passed. Prayer clause (c) of the petition has been reproduced in paragraph (7) and it is claimed that, thus, by the interim order the Court directed respondent no.3 to deposit Rs.13,13,748/- in this Court and the respondent no.3 has disobeyed that order. Perusal of the order dated 17.12.2003 shows that these averments are incorrect. Really speaking action should be initiated against the petitioner for casually making misleading averments in the petition. However, considering that the petitioner has really been fighting for recovery of his dues, I am not inclined to take any action against the petitioner

for making misleading statements in the petition.

5. So far as the submissions of the learned Counsel appearing for petitioner that an action should be initiated under the Contempt of Courts Act against the respondent nos. 1 and 2 is concerned, the only order that was pointed out to me which can be said to be operating against respondent nos. 1 and 2 is order dated 13.2.2003. By that order the Collector was directed to take necessary steps for recovery of the amount and to submit report to the Court. The learned Counsel appearing for petitioner also relied on the order dated 17.12.2003 to claim that that order also directs the recovery officer to take steps to recover the amount. Perusal of the order dated 17.12.2003 shows that it merely speaks that the recovery officer is at liberty to proceed further and to take all steps to recover the amount, there is no direction contained in the order dated 17.12.2003 to the Collector. So far as order dated 13.2.2003 is concerned, the learned Counsel appearing for petitioner could not point out to me the allegations made in the petition that the respondent nos. 1 and 2 have willfully disobeyed the order dated 13.2.2003. The only allegations found in the petition is that the respondents have disobeyed

the order dated 17.11.2003 and 17.12.2003. In these circumstances, therefore, in my opinion,it will not be appropriate to initiate any action under the Contempt of Courts Act against the respondent nos. 1 and 2. The petition is disposed of.